

This letter provides an example of how a carrier may use intrastate trips to qualify for the rolling stock exemption. See 86 Ill. Adm. Code 130.340(g). (This is a GIL.)

June 5, 2006

Dear Xxxxx:

This letter is in response to your letter dated September 15, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

My Firm represents an interstate motor carrier that holds common carrier for-hire transportation authority. The client transports cargo within and through the State of Illinois. The purpose of this letter is to obtain an opinion from the Illinois Department of Revenue (the 'Department') as to whether certain single-state Illinois movements of cargo constitute interstate commerce for purposes of the rolling stock sales and use tax exemption. I would appreciate a written response acknowledging your receipt of this letter.

The facts that prompt this request for an opinion involve a common scenario. The firm's client (the 'Motor Carrier') is authorized to transport various commodities between all points in the United States pursuant to authority issued by the Federal Motor Carrier Safety Administration ('FMCSA') or its predecessor, the Interstate Commerce Commission ('ICC'). The Motor Carrier's equipment transports various products to an Illinois customer, and almost all, if not all, of the service for the customer is through a warehouse distribution facility located in Illinois. Importantly, however, almost all, if not all, of the products transported originate at manufacturing or processing facilities ('Facilities') outside the State of Illinois.

Specifically, the party for whom the freight is being transported (the 'Ordering Party') has projected the needs of its retail stores and in the vast majority of situations has caused the product to be transported from out-of-state Facilities to its Illinois warehouse

where, in turn, it will use the motor carrier's subject equipment to distribute the product from the warehouse to the Ordering Party's affiliate's locations based in Illinois and bordering states. The Ordering Party controls and pays for the transportation of products from out-of-state and also controls and pays for the transportation of the product from the warehouse to the affiliate store locations. Importantly, the Ordering Party owns the product and bears the risk of its loss from the time the product is shipped from out-of-state until the time the product is delivered to the Illinois based affiliate or out-of-state affiliate locations. Even more importantly, the Ordering Party in almost all occasions intends to make delivery to the Illinois affiliate locations out of the Illinois warehouse and that intent is established when the Ordering Party initially causes the shipment of the product from its out-of-state source. No further processing takes place at the temporary storage facility in Illinois before distribution to the affiliate.

Based upon such facts, we believe the Department will agree with our position that the primary purpose of the temporary storage at the Illinois warehouse is to 'break bulk' and to 're-distribute' the Ordering Party's product to its affiliate's in-state and out-of-state retail stores. We also believe you will agree that such storage does not disrupt the interstate nature of the Ordering Party's distribution activities and that case law requires a finding that the Motor Carrier's transportation of the single-state shipments within Illinois is in interstate commerce.

Our view is based upon substantial authority from the ICC and the various federal courts that have affirmed the ICC's decisions. In such cases, the ICC has long applied a test for determining what qualifies as interstate transportation even though part of the transportation involved is a single-state movement. As the Department is presumably well aware, the ICC questions the nature of the 'fixed and persisting intent' of the Ordering Party. If that intent is established at the time the goods are originally transported from out-of-state and if that intent demonstrates a continuing goal to move the goods to an identifiable destination after temporary storage, such intent determines the interstate nature of the single-state transportation movement.

It is important to point out that the federal courts have unanimously upheld the decisions of the ICC and have ruled that such determinations were within the agency's primary jurisdictional authority to define the scope of interstate transportation. In recent years, each of the authoritative ICC rulings has been affirmed by the federal courts, and, to my knowledge, no court has ever seen fit to reverse the ICC in its position. Only a few of the relevant decisions are as follows:

Association of Texas Warehousemen - Petition for Declaratory Order 8 I.C.C.2d 476 (1992), affirmed, Merchants Fast Motor Lines. Inc. v. Interstate Commerce Commission, 5 F.3d 911 (5th Cir. 1993); Policy Statement - Motor Carrier Interstate Transportation, 8 I.C.C.2d 470 (1992), appeal dismissed, Merchants, supra; James River Corp. - Petition for Declaratory Order, (1988) Fed. Carr. Cases ¶ 37,506 (1988), affirmed, International Brotherhood of Teamsters v. Interstate Commerce Commission, 921 F.2d 904 (9th Cir. 1990); Victoria Terminal Enterprises. Inc. - Petition for Declaratory Order, 1988 Fed. Carr. Cases ¶ 37,424 (1987), modified, 1989 Fed. Carr. Cases ¶ 37,627 (1989), affirmed, Central Freight Lines v. Interstate Commerce Commission, 899 F.2d 413 (5th Cir. 1990); The Quaker Oats Company - Petition for Declaratory Order, 4 I.C.C.2d 1033 (1977), affirmed, California Trucking Association v. Interstate Commerce Commission, 900 F.2d 208 (9th Cir. 1990); Matlack, Inc. - Petition for Declaratory Order, 1987 Fed. Carr. Cases ¶ 37,360 (1987), affirmed, Middlewest Motor Freight Bureau v. Interstate Commerce Commission, 867 F.2d 458 (8th Cir. 1989); Armstrong World Industries. Inc.

- Petition for Declaratory Order, 2 I.C.C.2d 63 (1986), affirmed, State of Texas v. United States, 866 F.2d 1546 (5th Cir. 1989).

Notably, several of the most recent cases involve operations like those described herein in which an Ordering Party engages in the 'hub and spoke' distribution of its goods by way of two transportation movements interrupted only by temporary warehouse storage. In this regard, it is pertinent that the Ordering Party maintains control of the shipment of its products from their out-of-state origin until delivery to the affiliate's retail stores served out of the warehouse, which was a factor given considerable weight by the court in the Merchants decision cited above. It is also significant that the warehouse out of which the product moves is a distribution center operated by the Ordering Party itself (and not a public warehouse) for the purpose of redistributing its goods on to its affiliate, which was a relevant factor relied upon in the State of Texas case. In fact, each of the cases cited above support the proposition that the single-state movements in question are mere continuations of the interstate transportation of goods.

In this regard, we recognize that, in some cases, the ICC and the courts have placed weight upon the fact that the Ordering Party is merely distributing product to its own retail outlets. See North Carolina Utilities Commission v. United States, 253 F.Supp. 930 (E.D. N.C. 1966); Advantage Tank Lines, Inc. - Petition for Declaratory Order, 10 I.C.C.2d 64 (1994). As the cases cited above make plain, however, given that the Ordering Party owns and controls the product throughout the transportation movements, distribution to the affiliate's locations out of the Ordering Party's warehouse just as easily qualifies as an interstate movement, and it is not even necessary that the Ordering Party know in advance the exact ultimate destination of specific shipments when products are transported from their out-of-state origin points. See Merchants; State of Texas; International Brotherhood of Teamsters.

In sum, there exists definitive case law that supports the proposition that the firm's Motor Carrier client engages in single-state movements that are interstate in nature. The 'bottom line' is that, at the time the Ordering Party ships product from its out-of-state origin point, the Ordering Party intends for the product to move to its Illinois warehouse for temporary storage and then through the warehouse on to its affiliate's retail stores. Under such circumstances, we believe it is beyond dispute that the subject traffic is interstate in nature. Nevertheless, we would appreciate the Department's opinion on the matter in order to offer guidance to our client regarding the application of the rolling stock exemption to motor vehicles and trailers used to transport single-state shipments in Illinois.

Should you have any questions or need additional information, please do not hesitate to contact me. I appreciate your consideration of this matter and look forward to receiving a favorable opinion from the Department.

## **DEPARTMENT'S RESPONSE**

Notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce, or lessors under leases of one year or longer executed or in effect at the time of purchase to interstate carriers for hire for use as rolling stock moving in interstate commerce. (35 ILCS 120/2-5(12)) In addition, notwithstanding the fact that the sale is at retail, the Retailers' Occupation Tax does not apply to sales of tangible personal property to owners, lessors, or shippers

of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire. (35 ILCS 120/2-5(13)) See 86 Ill. Adm. Code 130.340(a).

Effective July 1, 2004, the trips or mileage of a motor vehicle for which persons or property are carried for hire just between points in Illinois may be used to qualify for the rolling stock exemption, if the journey of the passenger or shipment of the property either originates or terminates outside of Illinois. A carrier may use intrastate trips to qualify for the above-mentioned rolling stock exemption, so long as the carrier can document that the journey of the passenger or shipment of the property either originated or terminated outside the State of Illinois. See 86 Ill. Adm. Code 130.340(g).

For example, if the initial documentation for a shipment of goods from out-of-state into Illinois indicates that the destination is at the warehouse in City A, Illinois, then any subsequent shipment of the goods from the warehouse in City A to another destination in Illinois will not qualify as part of an interstate trip. However, if the initial documentation for a shipment of goods from out-of-state into Illinois indicates that the destination is at City B, Illinois, via the warehouse in City A, then the subsequent travel of the goods from the warehouse in City A to the destination in City B can count as part of the interstate trip.

If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote  
Associate Counsel

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